considered making no order as to costs as he persistently failed to inform the Executors of the basis of his valuation.

Order accordingly.

Solicitors for the applicant: *Bannon & Bailey.*

Solicitors for the respondent: *Shearn, Delamore & Co.*

PUBLIC PROSECUTOR v. ONG CHANG SOW.

[A. Cr. J. (Thomson, J.) January 19, 1954]

[Ipoh — Perak Criminal Appeal No. 132 of 1953]

Dangerous Drugs Ordinance, 1952, s. 6 — Unlawful possession of raw opium — Onus of proof.

In this case the evidence was that a party of Customs officers entered the house of the respondent and found under a bed a locked box which was later found to contain raw opium. The key of this box was not in the possession of the respondent but in the possession of a neighbour. At the close of the prosecution case the learned President acquitted and discharged the accused as he found that there was no case to answer on the charge under section 6 of the Dangerous Drugs Ordinance. He relied on the decision of the Singapore High Court in the case of **Ho Sen Seng v. Rex**[1] and held that the prosecution had not discharged the onus of showing that the respondent knew that the box contained opium.

Held: (1) the Singapore case referred to was not an authority for the learned President to follow as the decision was based on the wording of the Singapore Dangerous Drugs Ordinance which was different from the wording of the Federation Ordinance; (2) section 37(d) of the Dangerous Drugs Ordinance raises a presumption that a person is in possession of a dangerous drug if he is found to have in his custody or control anything whatever containing the dangerous drug and therefore the learned President was wrong in holding in this case that there was no prima facie case against the accused.

Case referred to:—

(1) *Ho Seng Seng v. Rex* (1951), 2 M.L.R. 210; (1951) M.L.J. 225.

CRIMINAL APPEAL.

I. Talog Davies (Federal Counsel) for the appellant.

Respondent in person.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Thomson, J.: — The respondent to this appea was charged before the Sessions Court at Sitiawan with:—

(i) Unlawful possession of raw opium in contravention of section 6 of the Dangerous Drugs Ordinance, 1952; and

(ii) Unlawful possession of smoking utensils in contravention of section 10(2) of the same Ordinance.

He pleaded guilty to the second charge and was convicted, and with that conviction I am not concerned here.

On the first charge he claimed trial. At the close of the case for the prosecution, the President held that there was no case to answer and he was accordingly acquitted and discharged. Against that order of acquittal and discharge the Public Prosecutor appealed.

The appeal came on for hearing before me on 18th December when I allowed it and set aside the order of acquittal and discharge. I intimated that I would give my reasons for this course at a later stage.

Briefly, the evidence for the prosecution was that on 10th August, 1953, a party of Customs officers entered the house of the respondent on Pangkor Island where they found a number of smoking utensils and, under a bed, a locked box containing about 4 lbs. of raw opium. The key of this box was not in the possession of the respondent but in the possession of a neighbour.

At the close of the prosecution case, the President held, on the authority of the Singapore case of *Ho Seng Seng v. Rex*[1], that the onus of proving that the respondent knew that the box contained opium lay upon the prosecution and that the prosecution evidence failed to make out a *prima facie* case on this point.

I see no reason to quarrel with the view the President took of the evidence. He was, however, definitely in error as to the law relating to the onus of proof.

In *Ho Seng Seng's*[1] case the Court was concerned with section 37(d) of the Singapore Dangerous Drugs Ordinance, 1951, which reads as follows:—

"(d) any person who is found to have had in his custody or under his control any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug."

The corresponding Section, however, of the Federation Ordinance which is as follows is different:—

"(d) any person who is found to have had in his custody or under his control **anything whatsoever containing** any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug."

I emphasise the words, "anything whatsoever containing" any dangerous drug. From the judgment of Brown, Ag. C.J., in *Ho Seng Seng's*[1] case, it will be noted that although these words are to be found in the former Singapore Ordinance which has now been repealed, they do not occur in the current Singapore Ordinance and that it was their omission from that Ordinance that was the *ratio decidendi* of the case in question.

Applying the provision of the Federation Ordinance which has been quoted to the facts in the present case,

it is clear that once the locked box containing the opium was found in the possession of the respondent, he was until the contrary was proved to be deemed to have been in possession of its contents and to have known the nature of these contents. The President was therefore wrong in holding at the close of the prosecution case that the evidence for the prosecution did not make out a *prima facie* case on these two points. Without the aid of the provision which has been quoted it did not make out such a case, but with its aid it clearly did.

Before departing from the case I would reiterate a warning I have given on previous occasions that when Singapore authorities on the construction of Singapore Ordinances are quoted, they should be carefully scrutinised to ascertain whether the portion of the Singapore Ordinance in question is the same as the corresponding portion of the corresponding Federation Ordinance. If the two portions are the same, then, in the absence of any local decision to the contrary, any decision of the Singapore Courts can safely be followed. If the portions are different, then any decision of the Singapore Courts should be studied with very great care lest it should turn not on a point on which the two Ordinances correspond but on a point on which they differ. Had such a course been followed in the present case, it would have been clear that the Singapore case which was relied on depended solely on a point on which the two Ordinances differed and it would therefore have been properly disregarded.

Order accordingly.

COMPTROLLER OF INCOME TAX
v.
HARRISONS & CROSFIELD (MALAYA) LTD.

[C. A. (Mathew, C.J. (F.M.), Murray-Aynsley, C.J. (S.) Bellamy, J.) December 1, 1953]

[K.L. — F.M. Civil Appeal No. 9 of 1953]

Income Tax Ordinance, 1947, s. 39 — Right of appeal to Board of Review — Power of the Board to exercise discretion (if any) vested in the Comptroller.

This was an appeal against the judgment of Wilson, J. reported in (1953) M.L.J. 45. In this appeal the following 3 questions came for the determination of the Court:

(1) Does the proviso to section 39 of the Income Tax Ordinance, 1947 as amended by the Income Tax (Amendment) Ordinance, 1951 vest in the Comptroller an absolute and uncontrolled discretion to reduce or remit the rate of tax or to leave the rate of tax unaltered?

(2) Is there any right of appeal to the Board of Review if the Comptroller refuses to act under the said proviso?

(3) Has the Board of Review power to exercise on appeal the discretion (if any) vested in the Comptroller under the said proviso?

Held: (1) in the particular circumstances set out in the proviso to section 39, the Comptroller cannot leave the rate of tax unaltered and is bound either to charge at a lower rate (namely twenty per centum) or at no rate in his discretion; (2) there is clearly a right of appeal to the Board of Review under section 75(1) of the Ordinance; and (3) by section 76(10) of the Ordinance, the Board clearly was acting in the exercise of powers conferred by this subsection, and the Board were right in so acting.

Cases referred to:—

(1) *Julius v. Lord Bishop of Oxford* 5 A.C. 214.

(2) *York and Morth Midland Railway Co. v. The Queen* El. & Bl. 858.

(3) *In re Bridgman* 29 L.J. (Ch.) 844.

(4) *Re Newport Bridge* 2 El. & Ed. 377.

(5) *Ex parte Sidebotham, Re Sidebotham* 14 Ch. 458.

CIVIL APPEAL.

D. B. W. Good (Senior Federal Counsel) for the appellant.

F. J. Woodward for the respondents.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Mathew, C.J.: — At the close of the arguments the Court unanimously dismissed this appeal, and we now proceed to give our reasons for the judgment.

This is an appeal under the Income Tax Ordinance, 1947 from the judgment of Wilson, J., dated 11th February, 1953, in which he dismissed the appeal of the Comptroller of Income Tax from the decision of the Board of Review in which the Board held that the Comptroller had erred in his decision not to charge the taxpayer, Harrisons & Crosfield (Malaya) Limited (hereinafter called "the Company"), with tax at a lower rate than thirty per centum, namely, twenty per centum, on every dollar of the amount equal to the dividends which the Company had paid in 1950 out of its chargeable income for the year of assessment 1951 (under the proviso to section 39 of the Income Tax Ordinance, 1947 as amended by the Income Tax (Amendment) Ordinance, 1951) and ordered that the assessment of the Company be amended accordingly.

The material facts may be summarised as follows: The Company is a company incorporated in Singapore and has a place of business at No. 96 Ampang Road, Kuala Lumpur in the Federation of Malaya. On 18th November, 1950 the Company declared a gross dividend of $533,333 on a declared net profit of $973,226 in